

MATTER OF ARIAS-URIBE  
In Deportation Proceedings

A-8760789

*Decided by Board April 30, 1971*

Where an application for relief under section 212(c) of the Immigration and Nationality Act is not coupled with an application for adjustment of status under section 245 of the Act, the applicant must meet the statutory requirement that he be returning to resume a lawful unrelinquished domicile of seven consecutive years following a temporary voluntary departure not under an order of deportation. Hence, respondent, a native and citizen of Mexico, whose deportability is predicated on his 1969 narcotics conviction and whose only departure from this country since his 1954 admission for permanent residence was in 1958 or 1959, is ineligible for section 212(c) relief since he is not an alien returning to resume a lawful unrelinquished domicile.

[*Matter of S—*, 6 I. & N. Dec. 392; *Matter of G—A—*, 7 I. & N. Dec. 274; and *Matter of Smith*, 11 I. & N. Dec. 325, distinguished.]

CHARGE:

Order: Act of 1952—Section 241(a)(11) [8 U.S.C. 1251(a)(11)]—Convicted of violation of law relating to the illicit possession of a narcotic drug, to wit, heroin (section 11500, California Health and Safety Code)

ON BEHALF OF RESPONDENT: William A. Herreras, Esquire,  
Thorpe, Sullivan, Clinnin & Workman  
940 East Santa Clara Street  
Ventura, California 93001  
(Brief filed)

The respondent, a native and citizen of Mexico, concedes that he is deportable under section 241(a)(11) of the Immigration and Nationality Act as an alien convicted for possession of heroin in violation of section 11500 of the California Health and Safety Code. His appeal is directed to the denial of an application for advance permission to return to an unrelinquished domicile of seven consecutive years pursuant to the provisions of section 212(c) of the Immigration and Nationality Act, 8 U.S.C. 1182(c).

The respondent, a married male alien, 23 years of age, was ad-